

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RIO PROPERTIES, INC. a Nevada  
corporation,

Plaintiff,

v.

STEWART ANNOYANCES, LTD., a  
California corporation; RODERICK  
STEWART, an individual; and  
ARMSTRONG HIRSCH JACKOWAY  
TYERMAN & WERTHEIMER, a California  
professional corporation,

Defendants.

02:01-CV-00459-LRH-PAL

ORDER

Presently before the court is a Motion to Retax Costs (# 478<sup>1</sup>) filed by defendants Stewart Annoyances, Ltd. and Roderick Stewart (collectively “Stewart”). Rio Properties Inc. (“Rio”) has filed an opposition (# 489), and Stewart replied (# 493).

On December 21, 2007, the Clerk of the court denied Stewart’s bill of costs “as there is currently no prevailing party in this Court.” (Dec. 21, 2007 Clerk’s Mem. (# 477)). Stewart argues this decision was erroneous because the existence of a prevailing party is not relevant to an award of appellate costs. Rio opposes the motion arguing that Stewart was only partially successful on

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<sup>1</sup>Refers to the court’s docket number.

1 appeal and is not entitled to costs. In addition, Rio argues that the written agreement between Rio  
2 and Stewart provides that the “prevailing party” is entitled to attorneys’ fees and costs. According,  
3 Rio argues, Stewart’s motion is premature as there is no prevailing party.

4 The court finds that consideration of fees and costs is premature at this juncture. In its  
5 objections to Stewart’s bill of costs, Rio asserts that the parties’ agreement has two provisions that  
6 alter the cost allocation contemplated by Rule 39. Because there are issues of fact regarding the  
7 interpretation of the agreement, the court will defer ruling on the issue of costs until those factual  
8 questions are resolved.

9 IT IS THEREFORE ORDERED that Stewart’s Motion to Retax Costs (# 478) is hereby  
10 DENIED without prejudice.

11 IT IS SO ORDERED.

12 DATED this 20<sup>th</sup> day of June, 2008.



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15 LARRY R. HICKS  
16 UNITED STATES DISTRICT JUDGE  
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